ROBERT P. VLASOFF

IBLA 2003-40 Decided April 15, 2003

Appeal from a decision of the State Director, Colorado State Office, Bureau of Land Management, denying application for a Native allotment under the Alaska Native Veterans Allotment Act. AA-83560.

Affirmed.

1. Alaska: Native Allotments

The Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), created an "open season" by declaring certain persons eligible (during a prescribed 18-month time period) for an allotment totaling 160 acres or less under the Alaska Native Allotment Act. A person is eligible to select an allotment only if, inter alia, he or she is a veteran who served during the period between January 1, 1969, and December 31, 1971. A BLM decision rejecting an allotment application filed pursuant to that provision because the appellant's military service concluded in 1968 will be affirmed, as the applicant is not eligible under the plain terms of the governing statute.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corp., Anchorage, Alaska, for appellant; Kenneth M. Lord, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Robert P. Vlasoff appeals from the September 23, 2002, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his Native allotment application filed pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000).

BLM rejected the application for the following reason:

> Your application, as filed, contained the following legal defect as stated in Department of Interior regulations 43 CFR Part 2568:
>
> > Information included with your application indicates your military service dates were September 21, 1966 through July 2, 1968. To be eligible under the Alaska Native Veterans Allotment Act, your military service must have included at least six months between January 1, 1969, and December 31, 1971, or you must have enlisted or been drafted after June 2, 1971, but before December 3, 1971. 43 U.S.C. § 1629g(b)(1)(B)(i) as amended by section 301 of Public Law 106-599 (December 21, 2000).
>
> In view of the above, your application is rejected.

(BLM Decision dated September 23, 2002, at 1.)

Vlasoff (appellant) filed a timely appeal from that decision. Appellant has requested expedited consideration of his appeal. That request is granted.

In his statement of reasons (SOR) appellant concedes that "Alaska Natives, like [himself], who are Vietnam veterans but served before January 1, 1969 or after December 31, 1971 are not eligible for an allotment." However, he asserts that, "[b]ecause the unfavored subclass of Alaska Native Vietnam veterans, including [himself], are treated differently based on the dates of their military service during the Vietnam era, the Equal Protection guarantees of the United States Constitution [are] implicated." (SOR at 4.) He concludes that "the military dates for eligibility for an allotment should be extended to fairly include all Alaska Natives who served their country during the Vietnam era." (SOR at 8.)

[1] The qualifying statutory provision was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, 112 Stat. 2461, 2516-18 (Oct. 21, 1998). Section 432 of that Act amended the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 et seq. (2000), by adding a new section 41. Section 41 has become known as the Alaska Native Veterans Allotment Act (ANVAA) and has been codified at 43 U.S.C. § 1629g (2000). ANVAA provides:

> During the eighteen month period following promulgation of implementing rules * * *, a person described in subsection (b) shall be eligible for an allotment of not more than two parcels of federal land

> totaling 160 acres or less under the Act of May 17, 1906 * * * , as such Act was in effect before December 18, 1971.

43 U.S.C. § 1629g(a)(1) (2000). 1/ ANVAA expressly restricted this eligibility to persons (1) who would have been eligible under the Alaska Native Allotment Act as that Act was in effect before December 18, 1971; and (2) who are veterans who served during the period between January 1, 1969, and December 31, 1971, and either served at least 6 months between January 1, 1969, and December 31, 1971, or enlisted or were drafted into military service after June 2, 1971, but before December 3, 1971. 43 U.S.C. § 1629g(b)(1) (2000); 43 CFR 2568.50. 2/

The record establishes that appellant did not meet the statutory criteria. His Form DD 214, by which military service is documented throughout the Government, demonstrates that he served on active duty in the United States Army between September 21, 1966, and July 2, 1968. Appellant concedes this fact. (SOR at 3.) Thus, he did not serve during the period between January 1, 1969, and December 31, 1971, as required by the statute. That fact alone disqualifies him under the governing statute. 3/ George F. Jackson, 158 IBLA 305, 307 (2003).

1/ The Act of May 7, 1906 (the Alaska Native Allotment Act), formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970), was repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (2000).

2/ Counsel for BLM explains that ANVAA was intended to allow anyone "who served in the military during the period immediately preceding the repeal of the Native Allotment Act of 1906 to file a late application." (BLM Answer at 2.) BLM accurately notes that, in the months before the repeal of the Native Allotment Act in December 1971, "thousands of Alaska Natives rushed to complete and file allotment applications with the Department," and that "[o]thers who neglected to file an application before the deadline were forever precluded from being granted a Native allotment." (Answer at 3.) Counsel explains that, by passing ANVAA, "Congress effectively acknowledged that some Alaska Natives may have been prevented from participating in the last minute application rush in 1971 through no fault of their own because they were serving in the military at the time." (Answer at 3.) It thus appears that ANVAA was not enacted to provide a new eligibility to veterans on account of their military service.

In the instant case, appellant left active duty in July 1968 and thus had more than 3 years to perfect an application under ANVAA.

3/ If an applicant meets this first criterion, he or she must also demonstrate either that he or she served at least 6 months between January 1, 1969 and, December 31, 1971, or that he or she enlisted or was drafted into military service after June 2, 1971, but before December 3, 1971.

Appellant argues that section 41(b) of the Alaska Native Veterans Allotment Act is unconstitutional because it denies equal protection to Alaska Native veterans who served in the military during the Vietnam era but not during the statutory qualifying period between January 1, 1969, and December 31, 1971. This Board recently rejected the same constitutionality argument in Gilbert Dementi, Sr., IBLA 2003-9 (Order dated Dec. 17, 2002). As we stated there, this Board has no authority to reconsider the terms or qualifying conditions set forth in the Alaska Native Veteran Allotment Act. The Board's authority derives from the executive branch; it does not coincide with that of the judiciary. Mack Energy Corporation, 153 IBLA 277, 290 (2000). Thus, the Board has no authority to alter the terms of an Act of Congress or declare it unconstitutional. If such a legislative enactment is in conflict with the U.S. Constitution, it is for the judicial branch to so declare. Amerada Hess Corp., 128 IBLA 94, 98 (1993); citing Ptarmigan Co., 91 IBLA 113 (1986), aff'd sub nom., Bolt v. United States, No. A87-106 (D. Ak. Mar. 30, 1990), aff'd, 944 F.2d 603 (9th Cir. 1991).

Appellant is not eligible to select a Native allotment under the plain terms of section 41(b) of the Alaska Native Veterans Allotment Act. 43 U.S.C. § 1629g (2000 Supp.). As he raises no cognizable grounds for altering BLM's decision rejecting his application, it is properly affirmed. George F. Jackson, 158 IBLA at 307.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

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David L. Hughes
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge